IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 1283 of 1994

MALNI KARAMACHARI GRAH NIRMAN S.SAMITI
V/S
STATE OF RAJ

Mr. SANGEET LODHA, for the appellant / petitioner

Mr. OP BOOB, AGA, for the respondent

Date of Order : 29.1.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

By this petition, the petitioner seeks to challenge Annexure-3 whereby the petitioner was called upon to deposit a sum of Rs. 19,405/- within seven days failing which recovery proceedings will be initiated.

Facts of the case are, that certain agricultural land was got converted by the petitioner from the Collector in accordance with the provisions of Rajasthan Land Revenue (Allotment, Conversion and Regularisation of Agriculture Land for Residential and Commercial purposes) Rules vide order of the Collector dt. 10.11.1987 Annexure-1. The petitioner accordingly deposited the conversion charges, leviable penalty, and other leviable amounts. Thereafter the petitioner was issued a Patta Annexure-2 on 27.12.1988, being a 99 years lease, wherein in Clause (1) the premium and yearly rent reserved was decribed as “Shunya”.

Thereafter came to be issued Annexure-3 a notice by the Sub Registrar, Barmer dt. 16.12.1992 informing that the amount of Rs.19,405/- is leviable under the orders of Inspector General of Stamps and Registration, Ajmer. This notice was replied by the petitioner vide Annexure-4, contending that no amount is leviable from the petitioner, as the charges leviable had been deposited, and thereafter lease deed was issued, thereafter the society has issued Patta to its members which have been duly registered after paying the requisite payable duties, and thus the notice was requested to be dropped. The order is assailed on the ground, that instrument is governed by the provisions of Section 3, and being an instrument by or on behalf of the State, is not chargeable to any stamp duty. Then, it was also contended that in various districts of State of Rajasthan the conversion of agricultural land is done, and no stamp duty is levied, and the petitioner cannot be singled out. Then, the contention on the basis of principles of natural justice were also raised as a ground. Then, it was also contended that the order of the Inspector General of Stamps and Registration copy whereof has not been supplied is also contrary to the provisions of Stamp Act.

A reply has been filed, contending that according to Patta Annexure-2 the Patta-holder is liable to pay all the rates, duties or charges on the land under Patta or on the buildings constructed thereon. Then, it is contended

that the order of the Inspector General of Stamps and Registration has been issued with concurrence of the State Government, and thereunder stamp duty is leviable as conveyance. The order has been produced as Annexure R/1 and R/2 respectively. The stamp duty is said to be chargeable under Article 35(b) of the Stamp Act. Various other objections have been raised.

Arguing the writ petition respective pleadings were reiterated.

I have considered the submissions. In substance the levy is sought to be supported by the provisions of Article 35(b). In that view of the matter, I may gainfully quote the provisions of Article 35 which reads as under;_

"35. Lease, including an under lease, or sub-lease and any agreement to let or sub-let-...

(a) where by such lease the rent is fixed and no premium is paid or delivered-	
(i) where the lease purports to be for a term of less than one year;	The same duty as a Bond (No.15), for the whole amount payable or deliverable under such lease.
(ii) where the lease purports to be for a term of not less than one year but not more than three years ;	The same duty as a conveyance (No.23) for a consideration equal to the amount or value of the average annual rent reserved.
(iii) where the lease purports to be for a term in excess of three years ;	The same duty as a conveyance (No.23) for a consideration equal to the amount or value of the average annual rent reserved.
(iv) where the lease does not purport to be for any definite term ;	The same duty as a conveyance (No.23) for a consideration equal to the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long.

(v) where the lease purports to be in perpetuity.	The same duty as a conveyance (No.23) or a consideration equal to one-fifth of the whole amount of rents which would be paid or delivered in respect of the first fifth years of the lease.
(b) where the lease is granted for a fine or premium or for money advanced and where no rent is reserved.	The same duty as a conveyance (No.23) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease.
(c) where the lease is granted for a fine or premium or for money advanced in addition to rent reserved.	The same duty as on a Conveyance (No.23) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease, in addition to the duty which would have been payable no such lease, if no fine or premium or advance had been paid or delivered. Provided that, in any case when an agreement to lease, is stamped with the ad valorem stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed eight annas.
Exemption.-(a) Lease executed in the case of a cultivator and for the purposes of cultivation (including a lease of trees for the production of food or drink) without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year, or when the average annual rent reserved does not exceed one hundred rupees. (b) [Omitted].”	

A look at the above article shows that according to Article 35 it applies to lease, including under lease, or sub-lease, and any agreement to let or sub-let. Then, according to clause (a) where by such lease the rent is fixed and no premium is paid or delivered. Then, the stamp duty is leviable to the extent as may be covered by the various clauses (i) to (v). In the present case, no rent is fixed in Annexure-2. Obviously, therefore, Clause (a) does

not apply. Then, according to Clause (b) also where the lease is granted for a fine, or premium, or for money advanced, and where no rent is reserved. In the present case again a look at Annexure-2 shows that the lease has not been granted for fine or premium or for money advanced. Likewise is the condition under Clause (c). Thus to be precise, for the purpose of leviability of stamp duty the document is not covered by any of the clauses of Article 35.

The net result of the aforesaid is that Annexure-3 is clearly without jurisdiction, and is required to be quashed.

Consequently the writ petition is allowed. Annexure-3 is quashed. The parties shall bear their own costs.

(N P GUPTA),J.

/Sushil/